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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	91201083
Party	Plaintiff Minnesota Twins, LLC
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Submission	Motion to Consolidate
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Date	06/10/2014
Attachments	TWINS SPECIAL - MOTION TO CONSOLIDATE.pdf(71631 bytes )

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

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MINNESOTA TWINS, LLC,	:	
	:	
Opposer,	:	
	:	
v.	:	Opposition No. 91201083
TWINS SPECIAL LLC,	:	
	:	
Applicant.	:	

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	:	
MINNESOTA TWINS, LLC,	:	
	:	
Opposer,	:	
	:	
v.	:	
TWINS SPECIAL LLC,	:	Opposition No. 91209135
	:	
Applicant.	:	
	:	
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	:	
	X	

**MOTION ON CONSENT TO CONSOLIDATE OPPOSITION PROCEEDINGS  
AND TO CONFORM OPPOSITION SCHEDULES**

Pursuant to Rule 511 of the Trademark Trial and Appeal Board Manual of Procedure and Fed. R. Civ. P. 42(a), Minnesota Twins, LLC (“Opposer”), by and through counsel, hereby

moves for an order consolidating Opposition Nos. 91209135 and 91201083. Opposer further requests that the schedule for the opposition proceedings be conformed by adopting the dates as set in the most recently instituted of the cases being consolidated, *i.e.*, the schedule set for Opposition No. 91209135. In the event the Board does not adopt the specific schedule set forth in Opposition No. 91209135, the parties respectfully request that the Board reset the deadline for the close of discovery in the older proceeding and allow sufficient additional time for discovery to be completed or, alternatively, to allow the parties to try to finalize settlement. Counsel for Applicant Twins Special LLC (“Applicant”) consents to this motion.

### **MEMORANDUM OF LAW**

#### **A. The Oppositions Should Be Consolidated Because They Contain Common Issues of Law and Fact**

On August 10, 2011, Opposer filed an opposition to Applicant’s application to register



the mark TWINS and Design, as shown here: , for goods in International Class 25, as shown in Application Serial Nos. 85/116,041 (Opposition No. 91201083). Applicant filed an answer thereto on November 20, 2013.

On February 1, 2013, Opposer filed a consolidated opposition to Applicant’s applications to register the standard character mark TWINS SPECIAL, the mark TWINS SPECIAL and



Design, as shown here: and the mark TWINS SPECIAL and Design,



as shown here: \_\_\_\_\_, all for goods in Class 28, as shown in Application Serial Nos. 85/115,992, 85/116,029 and 85/116,042, respectively (Opposition No. 91209135). The deadline for Applicant to answer the notice of opposition in that proceeding is July 26, 2014.<sup>1</sup>

Both opposition proceedings involve identical parties. Both proceedings also involve common questions of fact and law for the Board to resolve, including Applicant's right to register the marks TWINS and TWINS SPECIAL. Opposer owns a MAJOR LEAGUE BASEBALL club which owns the names and marks TWINS and TWINS-formative marks, and Opposer's grounds for opposition in both proceedings relate to those marks. Rule 511 of the Trademark Trial and Appeal Board Manual of Procedure provides that "[w]hen cases involving common questions of law or fact are pending before the Board, the Board may order the consolidation of the cases." See also Fed. R. Civ. P. 42(a); World Hockey Ass'n v. Tudor Metal Prods. Corp., 185 U.S.P.Q. 246, 248 (T.T.A.B. 1975) (ordering consolidation of two opposition proceedings because it was "equally advantageous to both parties in the avoidance of the duplication of effort, loss of time, and extra expense involved in conducting the proceedings alternately").

In addition, counsel for Applicant, David M. Kohn, agreed to the consolidation in a June 9, 2014 telephone conversation with Aryn M. Emert, counsel for Opposer.

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<sup>1</sup> Pursuant to TBMP § 511 and 37 CFR § 2.104(b), the Board may, in its discretion, order cases consolidated before joinder of issue.

**B. Discovery And Trial Periods Should Be Conformed**

Opposer, with Applicant's consent, further requests that the schedule for the opposition proceedings be conformed by adopting the dates as set in the most recently instituted of the cases being consolidated, *i.e.*, the schedule set for Opposition No. 91209135, as set forth below:

Time to Answer<sup>2</sup> : 07/26/2014  
Deadline for Discovery Conference<sup>3</sup> : 08/25/2014  
Discovery Opens : 08/25/2014  
Initial Disclosures Due : 09/24/2014  
Expert Disclosure Due : 01/22/2015  
Discovery Closes : 02/21/2015  
Plaintiff's Pretrial Disclosures : 04/07/2015  
Plaintiff's 30-day Trial Period Ends : 05/22/2015  
Defendant's Pretrial Disclosures : 06/06/2015  
Defendant's 30-day Trial Period Ends : 07/21/2015  
Plaintiff's Rebuttal Disclosures : 08/05/2015  
Plaintiff's 15-day Rebuttal Period Ends : 09/04/2015

Alternatively, in the event that the Board does not adopt the specific schedule set forth in Opposition No. 91209135, the parties respectfully request sufficient additional time for the parties to complete discovery and/or to try to finalize a settlement of this matter. The parties negotiated the terms of a complex worldwide agreement. The agreement was thereafter drafted, and has undergone multiple revisions. Opposer's counsel is currently reviewing the most recent draft of the agreement. If the agreement is accepted by both parties, the matter would be resolved without the need to proceed with either of the opposition proceedings. Because the parties have devoted their resources toward the resolution of this complicated, international matter, and in light of the size of the Opposer and Applicant companies, the size and scope of their respective programs and services, the extensive period of time involved and the substantial progress that has been made toward settlement, the parties have not yet exchanged discovery requests. The

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<sup>2</sup> Applies to Opposition No. 91209135. (In Opposition No. 91201083, Applicant answered on November 20, 2013.)

<sup>3</sup> Discovery conference and initial disclosure deadlines apply to Opposition No. 91209135. (In Opposition No. 91201083, the parties have held their discovery conference and agreed to waive Initial Disclosures, as set forth in the record.)

parties therefore respectfully request that, if the specific schedule of Opposition No. 91209135 is not adopted, the Board allow sufficient additional time for discovery to be completed or, alternatively, to allow the parties to try to finalize settlement.

### **CONCLUSION**

For the foregoing reasons, Opposition Nos. 91201083 and 91209135 should be consolidated and made part of Opposition Proceeding No. 91201083, and the schedule for both opposition proceedings should be conformed to the schedule set by the Board in Opposition No. 91209135.

Dated: New York, New York  
June 10, 2014

Respectfully submitted,

COWAN, LIEBOWITZ & LATMAN, P.C.  
*Attorneys for Opposer*

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**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that, on June 10, 2014, I caused a true and complete copy of the foregoing MOTION ON CONSENT TO CONSOLIDATE OPPOSITIONS AND TO CONFORM OPPOSITION SCHEDULES to be sent via First Class Mail, postage paid, to Applicant's attorney of record and correspondent, David M. Kohn, Lewis Kohn & Fitzwilliam LLP, 10935 Vista Sorrento Parkway, Suite 370 San Diego, CA 92130.

Dated: New York, New York  
June 10, 2014

/Aryn M. Emert/  
Aryn M. Emert